Kosić advokatska kancelarija

PROJECT FINANCING
VIA SPV

Project financing is a new service offered by the banks in Serbia in the area of construction works, and represents a type of financing projects of construction of residential facilities, business facilities, residential and business complexes, commercial facilities (large supermarkets, shopping centres, etc.), tourist and industrial capacities (hotels, industrial halls, warehouses, logistical centres, etc.), designated exclusively for further sale or long-term exploitation. Another specificity of this type of financing is reflected in the banks' request that the key construction stakeholder be a commercial entity founded especially for this purpose, a so-called SPV commercial entity, where special attention must be paid to regulated absolute rights over real estate, restrictions in disposal of city construction land, and unresolved legal irregularities, such as the legal instrument of a protected tenant. In this regard, all potential investors should proceed very carefully in the process of selecting the real estate to be financed. In this text, an attempt will be made to present project financing for the banking as well as legal standpoint.

A precondition for obtaining a loan for construction is that the Investor have proven experience in the area. Such experience and previously realized projects of similar nature are the best recommendation to the Bank to commence negotiations on Project financing. In the process, instead of credit solvency and value of the Investor's property, the basis for approval of loan will be the assessment of monetary project flows and
possibility of loan repayment.

Besides the location on which construction of the facility is planned, the Investor should found a new commercial entity (SPV - Special Purpose Vehicle), which deals in one single core business activity and whose sole and basic activity is the very project that is subject of Project financing. An SPV is founded in compliance with the Company Law (Official Gazette of the Republic of Serbia, No. 125 of 22 November 2004). Article 4 of the aforesaid law clearly defines that the incorporation deed may stipulate that the entity would continue its operations within a definite timeframe, until a certain event occurs or until a certain goal is accomplished. The incorporation deed may thus stipulate that the SPV would proceed until completion of a specific project, at the same time defining the precise moment of completion (technical acceptance of the facility, issuance of the public occupancy certificate, etc). The Company Law stipulates that the founders' share in an SPV may be monetary or non-monetary, where the latter may comprise the location itself. This fact is of crucial importance to the future Investor, as it might not only facilitate obtaining a loan, but it also opens up the possibility of securing certain tax savings. Upon selecting a location, the best course of action for an investor to follow would be agreeing with the vendor to carry out the transaction as follows:

- The vendor founds an SPV consisting of €500 in monetary capital and the subject location. This would represent no difficulty for the vendor since entering real estate into SPV is tax exempted. In this manner, the SPV becomes the owner of the subject location.

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- Based on the Contract on Share Transfer, the Investor becomes a 100% owner of the founded SPV, which is in turn the owner of the subject location. The Investor purchases shares rather than the real estate, which means that the sales price, which is in this case defined as a share transfer fee, is charged with the tax calculated at 0.3% instead of 2.5%, which is the amount of tax charged for real estate sales.

By purchasing a location in the manner described above the Investor acquires an SPV that has only one core business activity and that is the owner of the location. At the same time, the Investor obtains savings in due taxes while fulfilling the condition of minimal investment that needs to be secured in Project financing. The Investor provides some of his own assets for project financing, in an amount of no less than 20-30% of the value of the entire investment, where this amount may comprise the price of location and other expenses related to the location that the Investor may have incurred.

In addition to the above, the Investor has to provide the following documents:

- Construction permit, as well as other documents issued by competent authorities that are necessary for commencement of works on construction of facilities. The construction permit and other documentation must be made out in the name of the project company.

- Complete project documentation, as well as a detailed Business Plan, which will represent basis for inspection and supervision of works and utilization of the Bank-approved funds.

Advantages of Project financing are reflected in the fact that securities are related directly to the project and that the Investor is required to provide no further collateral, nor any additional funds such as mortgage on personal property etc. Moreover, the Bank provides full range of support in financing prospective buyers under favourable terms. Private individuals can thus purchase real estate during the construction phase or upon completion, where the sales funds are designated to repayment of the Investor's loan.

A loan is approved with a currency clause in EUR, CHF or USD. Funds are withdrawn in dinar counter value or in foreign currency in case of foreign import of goods or services needed for construction of the facility, in compliance with the Foreign Exchange Operations Act. Withdrawal of funds from the loan is made in tranches according to specific purposes, upon submission of invoices, i.e. interim payment certificates, under the Bank's approval. Repayment of the loan is coordinated with the sales schedule of the facility or is made in instalments, while the Investor opens a special-purpose account designated for funds from sale/lease of the real estate that are allocated to repayment of loan (monthly or quarterly or upon expiration of the grace period), with the due date of 10 years and a grace period adjusted to the deadline for completion of construction.

Given the current market prices of real estate in Serbia, Project financing represents the quickest, most efficient, and safest way for the Investors to raise necessary funds for construction of facilities.